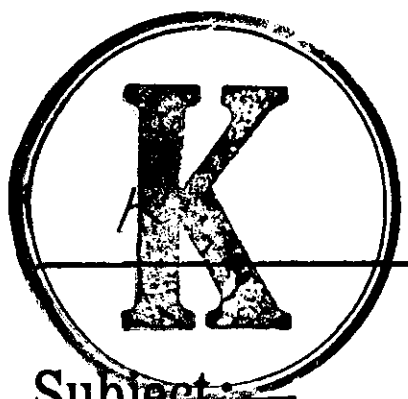
19.42. **File No.** O. Small Holders 42



Legal **DEPARTMENT**
"A" **BRANCH**

file

Subject:—

S.R.C. 4/6

Opinions under the Bombay Small Holders Relief Act, 1938

File No. O. Small Holders/42

Stl. Sectt. Slip 24 B e.

448-A

C O N T E N T S.

Legal Department file No. J. Small Holders/43.

No.	Consolidation No.	Subject.	Pages.
		Opinions under the Bihar Small Holders Relief Act, 1938.	
1.	J. No. 3891/9/7/42.	Whether under Sec. 6 of the Act, the collector is competent to determine the status of a judgment debtor as a Small Holder and to make orders execution proceedings relating to the attachment or sale of the properties specified in Sec. 6.	1-3.

Madhav Sahaiman.
7/5

C/5.

113-
31/5

Opinion of the R.L.A.

The question for the consideration of the R.L.A. is whether under section 8 of the small Holders Act, 1938 the Collector is competent to determine the statuss of a judgmentdebtor as a small holder and to pass orders staying execution proceedings relating to the attachment or sale of the properties specified in section 6.

2. Section 8 of the Bombay Small Holders Relief Act, 1938 provides that if in any proceedings under this Act a question arises whether a person is a small holder such question shall be decided by the Collector in a proceeding under section 3 or 4 and by the Court in a proceeding under under section 6, and the decision of the Collector or the Court as the case may be, shall, notwithstanding anything contained in any law for the time being in force, be final. Section 6 says down that notwithstanding anything in any law for the time being in force all proceedings in execution of decrees pending at the date of the commencement of this Act or which may be instituted during the period for which this Act remains in force, shall on an application of a small holder be stayed in so far as they relate to the attachmtn or sale of the following property belonging to such Holder, namely:-

(1)milch cattle, not exceeding two in number;

(2) one dwelling house etc.occupied by him;

(3)standing crop;

(4) household utensils necessary for the daily use of the small holder and his family ; and

(5) agricultural produce necessary for the support of the small executio proceedings under section 6 may be pending before the Collector or the Civil Court and it is obligatary on the executing authority(the Collector or the Civil Court as the case may be) to stay them on the application of the Judgment-debtor, provided he is a small holder as defined in section2(2). If the statuss of such debtor as a small holder is in question it would be for the Civil Coulrt to decide it under section 5 irrespective of the question whether the executing authority is the Collector or the Civil Court. The view taken by the Collector,West Khandesh is not correct.

Sd/-P.N.K.
Assistant Advocate of Legal Affairs.

U.O. to R.D.,No. 5591 ,dated the 9th July 1942.